

05/02/2024

By: A. Turner Deputy

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**

12 JOSEPH HOUSLEY, individually, and on
13 behalf of other members of the general public
14 similarly situated;

15 Plaintiff,

16 v.

17 SONRAY SOLAR, INC. DBA SONRAY
18 CONSTRUCTION, a California corporation;
19 and DOES 1 through 100, inclusive;

20 Defendants.

Case No.: 34-2023-00334376-CU-OE-GDS

Assigned for All Purposes to:
Honorable Jill Talley
Department 23

CLASS ACTION

**PLAINTIFF’S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF
CLASS NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Reservation No.: A-334376-001]

*[Declaration of Proposed Class Counsel
(Douglas Han); and [Proposed] Order filed
concurrently herewith]*

Hearing Date: July 12, 2024
Hearing Time: 9:00 a.m.
Hearing Place: Department 23

Complaint Filed: February 7, 2023
FAC Filed: June 23, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 12, 2024 at 9:00 AM, or as soon as the matter may
2 be heard, before the Honorable Jill Talley in Department 23 of the Sacramento County Superior
3 Court located at 720 9th Street, Sacramento, California 95814, Plaintiff Joseph Housley
4 (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the class action settlement described herein and
6 as set forth in the Class Action and PAGA Settlement Agreement (“Settlement
7 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
8 declaration of Douglas Han, including, and not limited to, the means of allocation
9 and distribution of funds;
- 10 • Conditionally certifying the Class for settlement purposes only;
- 11 • Appointing Plaintiff as the class representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the Court Approved Notice of Class Action Settlement and Hearing
14 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
15 Settlement Agreement;
- 16 • Directing the mailing of the Class Notice with a postage-paid return envelope to
17 the Class;
- 18 • Approving the proposed deadlines for the settlement administration process;
- 19 • Approving CPT Group, Inc. as the Administrator; and
- 20 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
21 Agreement, at which time the Court will also consider whether to grant Final
22 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
23 Litigation Expenses Payment, Class Representative Service Payment,
24 Administration Expenses Payment, and approval of the allocation of the Private
25 Attorney General Act of 2004 (“PAGA”) Penalties.

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1 Pursuant to Local Rule 1.06(A), the court will make a tentative ruling on the merits of this
2 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings
3 for the department may be downloaded off the court’s website. If the party does not have online
4 access, they may call the dedicated phone number for the department as referenced in the local
5 telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the
6 hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00
7 p.m. the court day before the hearing, no hearing will be held.

8 This motion is based upon the following memorandum of points and authorities;
9 Declaration of Proposed Class Counsel (Douglas Han); [Proposed] Order filed concurrently with
10 this motion; pleadings and other records on file with the Court in this matter; and such documentary
11 evidence and oral argument as may be presented at the hearing on this motion.

12
13 Dated: May 2, 2024

JUSTICE LAW CORPORATION


14 By: 
15 Douglas Han
16 Shunt Tatavos-Gharajeh
17 Haig Hogdanian
18 *Attorneys for Plaintiff*

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour
3 class action settlement by Plaintiff on behalf of himself all current and former hourly-paid or non-
4 exempt employees of Defendant SonRay Solar, Inc. dba SonRay Construction (“Defendant”)
5 within the State of California at any time during the period from February 7, 2019, through October
6 31, 2023 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number
7 of Class Members is estimated to be seven hundred thirty-nine (739), which was confirmed by
8 Defendant. (Declaration of Douglas Han In Support of Plaintiff’s Motion for Preliminary
9 Approval of Class Action Settlement (“Han Decl.”), ¶¶ 7-8.)

10 **II. BACKGROUND**

11 On February 6, 2023, Plaintiff provided written notice to the California Labor and
12 Workforce Development Agency and Defendant. (Han Decl., *supra*, at ¶ 9; Exhibit 3.)

13 On February 7, 2023, Plaintiff filed a wage-and-hour class action lawsuit in the Superior
14 Court of California, County of Sacramento, alleging nine (9) causes of action. (Han Decl., *supra*,
15 at ¶ 10; Exhibit 4.)

16 On June 23, 2023, Plaintiff filed a First Amended Complaint pleading exhaustion of the
17 65-day statutory notice period to the LWDA. (Han Decl., *supra*, at ¶ 11; Exhibit 5.)

18 After engaging in discovery, investigations, and arms-length negotiations, on February 1,
19 2024, the Parties remotely attended mediation with experienced neutral Lisa Klerman, *Esq.* that
20 resulted in the settlement of this matter. (Han Decl., *supra*, at ¶ 12.)

21 **III. INVESTIGATION/ LITIGATION HISTORY**

22 **a. Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions**

23 Plaintiff propounded form interrogatories, special interrogatories, requests for admission,
24 and requests for production of documents. (Han Decl., *supra*, at ¶ 14.) Defendant responded to
25 the formal discovery requests. (*Ibid.*) The Parties met and conferred and agreed to engage in an
26 informal exchange of information and then eventually remotely attended mediation. (*Ibid.*)

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1 Prior to the mediation, Defendant produced several documents relating to its policies,
2 practices, and procedures. (Han Decl., *supra*, at ¶ 15.) As part of Defendant’s production, Plaintiff
3 also reviewed time records, pay records, and information relating to the size and scope of the Class.
4 (*Ibid.*) Putative class members were also located and interviewed to attain a better understanding
5 of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

6 Based on the information provided by Defendant and interviews with putative class
7 members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees
8 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
9 failed to reimburse employees for necessary business expenses; (4) issued noncompliant wage
10 statements; and (5) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 17-23.)

11 **b. The Parties Were Able to Reach an Agreement on Settlement of the Action**

12 **i. The Parties Attended Mediation Which Led to the Settlement**

13 The Parties remotely attended mediation with an experienced mediator. (Han Decl., *supra*,
14 at ¶ 24.) Under the auspices of the mediator, the Parties reached a settlement, the terms were
15 memorialized in the Settlement Agreement. (*Id.* at ¶ 24; Exhibits 2, 6.)

16 **ii. The Settlement Was Reached as a Result of Arm’s-Length Negotiations**

17 The Settlement was reached because of arm’s-length negotiations. (Han Decl., *supra*, at ¶
18 27.) Though cordial and professional, the settlement negotiations have always been adversarial
19 and non-collusive in nature. (*Ibid.*) At the mediation, the Parties’ counsel conducted extensive
20 arm’s-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)

21 Plaintiff and Class Counsel recognize the expense and length of additional proceedings
22 necessary to continue the litigation through trial and any possible appeals. (Han Decl., *supra*, at ¶
23 28.) Plaintiff and Class Counsel also considered the uncertainty and risk of further litigation,
24 potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based on the
25 foregoing, Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and reasonable
26 settlement and is in the best interests of the Class Members. (*Ibid.*)

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1 **iii. The Settlement Is the Result of Thorough Investigation and Discovery**

2 The Parties investigated and evaluated the strengths and weaknesses of the claims and
3 defenses before reaching the Settlement and engaged in research and discovery to support the
4 Settlement. (Han Decl., *supra*, at ¶ 29.) The Settlement was only possible following significant
5 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
6 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
7 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
8 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
9 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
10 at ¶ 29; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

11 **c. Terms of the Proposed Settlement**

12 **i. Deductions from the Settlement**

13 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
14 for the non-reversionary total sum of \$2,300,000 (“Gross Settlement Amount”) which includes:
15 (1) Class Counsel Fees Payment up to \$805,000 (35% of the Gross Settlement Amount); (2) Class
16 Counsel Litigation Expenses Payment up to \$20,000; (3) Class Representative Service Payment
17 up to \$10,000; (4) Administration Expenses Payment up to \$20,000; and (5) PAGA Penalties up
18 to \$150,000. (Han Decl., *supra*, at ¶ 25.)

19 **ii. Calculating Settlement Payments**

20 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
21 \$1,295,000 (“Net Settlement Amount”) will be paid to Participating Class Members – with a gross
22 *average* Individual Class Payment estimated at \$1,752.37. (Han Decl., *supra*, at ¶ 26.)

23 The Participating Class Members will receive a proportionate share of the Net Settlement
24 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 24;
25 Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated twenty percent (20%)
26 to the settlement of wage claims and eighty percent (80%) to the settlement of claims for interests
27 and penalties. (*Id.* at § C(2)(d)(i).)

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1 The portion of the PAGA Penalties that is to be paid to each Aggrieved Employee shall be
2 determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 24;
3 Exhibit 2, *supra*, at § C(2)(e)(i).) Aggrieved Employees' portion of the PAGA Penalties will be
4 allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

5 **iii. Notice to the Class**

6 No later than fourteen (14) calendar days after the Court grants Preliminary Approval of
7 the Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at
8 ¶ 24; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the
9 Class Data, the Administrator will send the Class Notice with a translation to all Class Members
10 identified in the Class Data via first-class United States Postal Service mail. (*Id.* at § G(4)(c).)

11 **iv. Distribution of Funds**

12 The Gross Settlement Amount will be funded and distributed pursuant to the timeline and
13 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at §§ D(2), D(3).)
14 Uncashed settlement checks will be canceled and transmitted to the California Controller's
15 Unclaimed Property Fund in the name of the Class Member. (*Id.* at §§ D(3)(a), D(3)(c).)

16 **v. Release of Claims**

17 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
18 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
19 Participating Class Members, on behalf of themselves and their former and present representatives,
20 agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from
21 the Released Class Claims. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § E(2).)

22 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
23 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
24 Participating and Non-Participating Class Members, who are Aggrieved Employees, are deemed
25 to release, on behalf of themselves and their former and present representatives, agents, attorneys,
26 heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA
27 Claims. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § E(3).)

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1 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
2 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
3 Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs,
4 administrators, successors, and assigns generally waives, compromises, releases, and discharges
5 the Released Parties from the Plaintiff’s Release. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at
6 § E(1).) Plaintiff also expressly waives and relinquishes the provisions, rights, and benefits, if any,
7 of section 1542 of the Civil Code. (*Id.* at § E(1)(a).)

8 With regards to class action releases, “[A] court may release not only those claims alleged
9 in the complaint and before the court, but also claims which ‘could have been alleged by reason of
10 or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
11 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the releases in
12 this case are acceptable because they are limited to the scope of the allegations in the operative
13 complaints. Moreover, the released claims are ““based on *the identical factual predicate* as that
14 underlying the claims in the settled class action.”” (*Ibid.*) In other words, the released claims do
15 not ““go beyond the scope of the allegations in the operative complaint”” (*Ibid.*)

16 **d. Counsel for Both Parties Are Experienced in Similar Litigation**

17 The Parties’ counsel are experienced in wage-and-hour employment law and class actions.
18 (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf
19 of employees for Labor Code violations and are experienced and qualified to evaluate the class
20 claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*) This
21 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
22 their determination to endorse the Settlement.¹ (*Ibid.*)

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27 ¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
28 the Class Notice has been provided to the Class, and they have had an opportunity to respond. This
information will be provided to the Court in conjunction with the Motion for Final Approval of
Class Action Settlement.

1 **IV. ARGUMENT**

2 **a. Class Action Settlements Are Subject to Court Review**

3 California Rules of Court, rule 3.769 requires court approval for class action settlements.²
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
6 preliminary approval of class settlements:

- 7 (a) A settlement or compromise of an entire class action, or a cause of action in
8 a class action, or as to a party, requires the approval of the court after
9 hearing.
10 . . .
11 (c) Any party to a settlement agreement may serve and file a written notice of
12 motion for preliminary approval of the settlement. The settlement
13 agreement and proposed notice to class members must be filed with the
14 motion, and the proposed order must be lodged with the motion.

15 Courts have discretion to approve settlements that are fair, not collusive, and consider ““all
16 the normal perils of litigation as well as the additional uncertainties inherent in complex class
17 actions.”” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub*
18 *nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

19 **b. The Proposed Settlement Is a Reasonable Compromise of Claims**

20 An understanding of the amount in controversy is an important factor in whether the
21 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
22 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
23 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
24 Cal.App.4th 399, 409.) The most important factor in this regard is ““the strength of the case for
25 plaintiffs on the merits, balanced against the amount offered in settlement.”” (*Kullar*, at p. 130;
26 see also *Munoz*, at p. 409.)

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28 ² The California Supreme Court has authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 *Kullar* instructs the court is not to “decide the merits of the case or to substitute its
2 evaluation of the most appropriate settlement for that of the attorneys.” (*Kullar v. Foot Locker*
3 *Retail, Inc., supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require a statement of the maximum
4 amount the class could recover if plaintiff prevailed on all his claims, provided there is a record
5 that allows “an understanding of the amount that is in controversy and the realistic range of
6 outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles, supra*, 186
7 Cal.App.4th at p. 409.) “[A]s the court does when it approves a settlement as in good faith under
8 Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is
9 within the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

10 **i. The Settlement Amount of \$2,300,000 Is Fair and Reasonable**

11 The Settlement Agreement was only possible following significant investigation and
12 evaluation of the relevant policies and procedures, as well as the data produced, as referenced in
13 Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and
14 potential damages. (Han Decl., *supra*, at ¶ 29.)

15 The claims are predicated on the purported: (1) failure to pay overtime wages; (2) failure
16 to pay minimum wages; (3) failure to provide meal and rest breaks and pay applicable premium
17 wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure
18 to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business &
19 Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 30.) Defendant vehemently denies
20 the theories of liability. (*Id.* at ¶ 21.)

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1 While Plaintiff believes the case is suitable for certification, uncertainties with respect to
2 certification are always present. (Han Decl., *supra*, at ¶ 32.) As the California Supreme Court
3 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
4 always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
5 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
6 (*Ibid.*) Thus, the calculations for potential damages were discounted.

7 **ii. The PAGA Penalties of \$150,000 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties include Labor
9 Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a),
10 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 40.)
11 Defendant asserted, regardless of the results of the underlying causes of action, PAGA penalties
12 are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained it had a
13 strong argument it would be unjust to award maximum PAGA penalties given the law’s current
14 unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 40; *Thurman v. Bayshore*
15 *Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)
16 Furthermore, Defendant argued without stacking and limited to the initial violation, the PAGA
17 penalties would be limited to about **\$43,300** (433 employees x \$100 penalty for initial violation)
18 on the low end and **\$259,800** (433 employees x \$100 penalty for initial violation x 6 theories of
19 recovery) on the high end. (Han Decl., *supra*, at ¶¶ 41-43.)

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25 ³ (See e.g. *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440
[affirming decertification of class claiming misclassification]; *Aguiar v. Cintas Corp. No. 2* (2006)
144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson’s Inc.* (2006) 141
Cal.App.4th 1422 [affirming denial of certification].)

1 Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
 2 at ¶ 44.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
 3 Allocating \$150,000 to PAGA civil penalties was reasonable given that Defendant is also paying
 4 an additional \$2,150,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in
 5 good faith and “there is no indication that [the] amount was the result of self-interest at the expense
 6 of other Class Members,” such amounts are reasonable.⁴ (*Ibid.*)

7 Considering the defenses, supporting evidence, and position that the case is not suitable for
 8 class treatment, the Settlement Agreement is reasonable, adequate, and fair.

9 **c. Discount Analysis Justifies the Settlement**

10 Excluding the civil penalties, which could be completely discretionary, the total estimated
 11 potential exposure, assuming certification and prevailing at trial, would be about **\$15,025,206.62**
 12 on the low end and around **\$16,022,741.80** on the high end. (Han Decl., *supra*, at ¶ 45.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$2,658,969.50	70%	60%	\$319,076.34
Meal Break Premiums	\$5,317,939	60%	60%	\$850,870.24
Overtime/Minimum Wage: Off-the-Clock Work	\$1,994,227.12 to \$2,991,762.30	60%	60%	\$319,076.34 to \$478,681.97
Unreimbursed Business Expenses	\$194,595	30%	70%	\$40,864.95
Wage Statement Penalty	\$1,732,000	60%	60%	\$277,120
Waiting Time Penalty	\$3,127,476	60%	60%	\$500,396.16
MAXIMUM TOTAL EXPOSURE	\$15,025,206.62 to \$16,022,741.80⁵			\$2,307,404.03 to \$2,467,009.66⁶

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 25 ⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009
 26 U.S. Dist. LEXIS 33900, at *24; see e.g. *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579,
 “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any
 damages to the PAGA claims”.)

27 ⁵ (Han Decl., *supra*, at ¶¶ 33-39.)

28 ⁶ (*Id.* at ¶¶ 46-51.)

1 The realistic recovery for this case is about **\$2,307,404.03** on the low end and
2 **\$2,467,009.66** on the high end. (Han Decl., *supra*, at ¶ 52.) The Gross Settlement Amount is about
3 fourteen percent (14.35%) of the maximum potential exposure and around ninety-three percent
4 (93.23%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

5 The only question at preliminary approval is whether the settlement is within the range of
6 possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594
7 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The fact
8 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and
9 of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”
10 (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska*
11 *P’ship* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation
12 and avoidance of wasteful and expensive litigation that induce consensual settlements. The
13 proposed settlement is not to be judged against a hypothetical or speculative measure of what
14 might have been achieved by the negotiators”). This settlement is in line with the realistic exposure
15 if Plaintiff prevailed at trial and provides a significant recovery for the Class Members.

16 **d. Conditional Certification of the Class Is Appropriate**

17 Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one of
18 a common or general interest, of many persons, or when the parties are numerous, and it is
19 impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court*,
20 *supra*, 34 Cal.4th at p. 326.) California courts certify class actions if plaintiff identifies “both [1]
21 an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

22 The Class is ascertainable and numerous as to make it impracticable to join all Class
23 Members, and there are common questions of law and fact that predominate over any questions
24 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 53.) Plaintiff contends his claims
25 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the
26 interests of the Class. (*Ibid.*) Plaintiff asserts the prosecution of separate actions by individual
27 Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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1 **i. The Proposed Class Is Ascertainable and Sufficiently Numerous**

2 “Ascertainability is required in order to give notice to putative class members as to whom
3 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
4 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
5 by describing a set of common characteristics sufficient to allow a member of that group to identify
6 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
7 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
8 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

9 This case involves approximately seven hundred thirty-nine (739) Class Members,
10 meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 54; *Ghazaryan v. Diva*
11 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as
12 190 current and former employees” is sufficiently numerous].)

13 **ii. Class Members Share a Well-defined Community of Interest**

14 The community of interest requirement “embodies three factors: (1) predominant common
15 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
16 (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v.*
17 *Superior Court, supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for
18 certification *does not mandate that class members have uniform or identical claims.*” (*Capitol*
19 *People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis
20 in original).) Rather, courts focus on the defendant’s internal policies and “pattern and practice . .
21 . in order to assess whether that common behavior toward similarly situated plaintiffs renders class
22 certification appropriate.” (*Ibid.*) The application of each of these factors is discussed below.

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1 **1. Common Issues Predominate**

2 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
3 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
4 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690.) In other words, courts
5 determine whether the elements necessary to establish liability are susceptible to common proof,
6 even if the class members must individually prove their damages. (*Brinker Restaurant Corp. v.*
7 *Superior Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class
8 certification when the plaintiff can present evidence of common policies. (See e.g. *Jones v. JGC*
9 *Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS
10 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.*
11 (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court
12 certified class of dancers on state law claims].)

13 Plaintiff asserts common issues of fact and law predominate as to each of the claims
14 alleged. (Han Decl., *supra*, at ¶ 55.) Plaintiff contends all Class Members were subject to the same
15 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

16 **2. Plaintiff’s Claims Are Typical of the Class Claims**

17 Typical claims rely on legal theories and facts that are substantially like those of other class
18 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

19 Plaintiff is a former employee of Defendant and alleges he and the Class Members were
20 employed by the same company and injured by the common policies and practices related to the
21 claims described above. (Han Decl., *supra*, at ¶ 56.) Plaintiff seeks relief for these claims and
22 derivative claims on behalf of the Class. (*Ibid.*) Thus, the claims arise from the same employment
23 practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

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1 **f. Notice to the Class Complies with California Rules of Court, Rule 3.769(f)**

2 California Rules of Court, rule 3.769(f), provides:

3 If the court has certified the action as a class action, notice of the final approval
4 hearing must be given to class members in the manner specified by the court. The
5 notice must contain an explanation of the proposed settlement and procedures for
6 class members to follow in filing written objections to it and in arranging to appear
at the settlement hearing and state any objections to the proposed settlement.

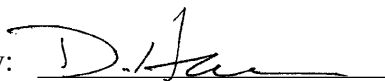
7 The Class Notice meets all these requirements. The Class Notice advises the Class
8 Members of their right to participate in the Settlement, how and when to object to or request
9 exclusion from the Settlement, and date, time, and location of the Final Approval Hearing.

10 **V. CONCLUSION**

11 Plaintiff submits the Settlement is in the Class's best interests. Under the applicable class
12 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class
13 should be conditionally certified for settlement purposes, and Class Notice should be approved.

14
15 Dated: May 2, 2024

JUSTICE LAW CORPORATION

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